

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

UNITED STATES OF AMERICA,	:	
	:	
	:	
v.	:	CASE NO.: 7:18-CR-21(WLS)
	:	
SAMUEL HOWARD and TOKESHA	:	
BAILEY,	:	
	:	
Defendants.	:	

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**ORDER**

Before the Court is Defendant Tokesha Bailey's Motion to Suppress Statements and Motion to Suppress Evidence (Docs. 50, 51). For the following reasons, Bailey's Motions are **DENIED**.

**PROCEDURAL BACKGROUND**

On May 8, 2018, Bailey was indicted for possession with intent to distribute methamphetamine. (Doc. 1.) On December 21, 2018, Bailey moved to suppress all statements and evidence obtained after a law enforcement traffic stop on October 11, 2016, allegedly in violation of the Fourth Amendment. (Docs. 50, 51.) The Government did not respond, but advised its response would be largely similar to the Response submitted for co-defendant Howard. (Doc. 82 at 4.) On March 13, 2019, the Court held a hearing on the Motions. (*See id.*) Bailey filed a Motion to Supplement her prior motions. (Doc. 83.) Bailey's Motion to Supplement is **GRANTED**, as such the Court will consider Bailey's supplemental brief in addition to her initial motions to suppress. The Government did not provide a supplemental response, but advised at the pretrial hearing that it stands on the arguments made in its prior brief. Accordingly, the motions are ripe for review.

### **FACTUAL FINDINGS**

At the March 13, 2019 hearing on Bailey's Motions to Suppress, the Government presented two witnesses and its two exhibits were admitted without objection. (*See* Doc. 86.) Bailey presented no witnesses and no exhibits. *Id.* Upon reviewing the exhibits, witnesses' testimony, and Parties' arguments, the Court makes the following findings of fact.

On October 11, 2016, Keith Newman, of the Thomas County Sheriff's Office, received information from a confidential informant (CI) that a younger black male with dreadlocks and known as Cruze would be driving a dark blue Buick vehicle from Moultrie and delivering methamphetamine to someone in the area of 2050 Church Street in Meigs, Georgia. Newman and other agents then set up surveillance in less than an hour based on the information provided by the CI. Hidden behind trees and bushes, Newman saw the dark blue vehicle drive slowly pass 2050 Church Street, turn left onto East Johnson Street, and then right on East Railroad Street. Newman observed the driver, matching the description given by the CI, looking in the direction of 2050 Church Street. The dark blue vehicle then parked in the middle of East Railroad Street. Agents then activated the blue lights on their vehicle, stopped in front of the dark blue Buick, and approached the driver and passenger, who he identified as Samuel Howard and Bailey, respectively. Newman smelled the odor of burnt marijuana coming from the vehicle. He then instructed Howard and Bailey to exit the vehicle. Both parties were detained. Agents then searched the vehicle, finding 85 grams of methamphetamine, three ounces of ICE, a cellphone, a zip pouch containing empty baggies, a digital scale, and about \$1,800 in cash. Howard and Bailey were arrested on charges of trafficking methamphetamine. Bailey advised Newman she did not know why she was being arrested and denied knowledge of drugs in the vehicle. Newman later read Bailey her *Miranda* rights waiver, which she signed. Newman then conducted an interview with Bailey. She advised the three ounces of methamphetamine were hers; she found them and was going to sell them. She also advised she owned the cell phone located in the vehicle.

## DISCUSSION

### **A. Reasonable Suspicion of Criminal Activity**

Law enforcement officers must have reasonable, articulable suspicion of criminal activity to conduct an investigatory stop. *Terry v. Ohio*, 392 U.S. 1 (1968). Law enforcement officers have reasonable suspicion of criminal activity when a reliable tip from a confidential informant is received. *Alabama v. White*, 496 U.S. 325, 330 (1990); *United States v. Woods*, 365 F. App'x 914 (11th Cir. 2010)(per curium). A “totality of the circumstances” approach is used to assess a tip’s reliability. *Illinois v. Gates*, 462 U.S. 213, 230-33 (1983); *United States v. Gonzales*, 969 F.2d 999, 1002-03 (11th Cir. 1992). Under the totality of the circumstances approach, the following factors are considered: (1) whether the tip places the informant at risk for negative repercussions if untrue, because it was provided directly rather than anonymously; (2) whether the tip provides specific information typically known only by someone with personal knowledge, (3) whether the information is capable of objective verification, (4) whether the tip details future actions of third parties ordinarily not easily predicted that later occur, (5) whether the informant has personal knowledge, (6) whether there is a past history between the informant and the police department that supports reliability, and (7) whether the information was corroborated by subsequent investigation. *Richardson v. Quitman County, Ga.*, 912 F. Supp. 2d 1354, 1370-71 (M.D. Georgia 2012). Further, officers have probable cause to make a warrantless arrest in a public place if there is probable cause that a felony occurred.

Here, law enforcement officers had reasonable, articulable suspicion of criminal activity to conduct an investigatory stop. Under the totality of circumstances, the tip is reliable, even though the identity of the CI was not revealed to defendant. *See Roviato v. United States*, 353 U.S. 53 (1957) (holding that disclosure of an informant is not required if the informant is not an active participant, but rather a mere tipster). The CI, in police custody at the time the information was provided, advised officers about a specific person, vehicle, location, and time where drug activity would occur. Officers conducted surveillance and corroborated the information provided by the CI and observed additional conduct. Because the CI provided sufficient details predicting future drug activity, which were confirmed by law enforcement officers and followed by additional observation, the Court finds that the information was

reliable under the totality of circumstances to provide officers with reasonable, articulable suspicion of criminal activity to conduct a stop of Howard's vehicle and arrest Bailey.

### **B. Authority to Search the Vehicle**

Probable cause exists when police receive reliable information from a confidential informant regarding the suspect's involvement in drug activity, and the information is subsequently corroborated by independent police investigation. *United States v. Goddard*, 312 F.3d 1360, 1363–64 (11th Cir. 2002). The smell of marijuana creates probable cause. *United States v. Tobin*, 923 F.3d 1506, 1512 (11th Cir. 1991). A police officer may conduct a warrantless search of an automobile if ““(1) there is probable cause to believe the vehicle contains contraband or other evidence which is subject to seizure under the law, and (2) exigent circumstances necessitate a search or seizure.”” *United States v. Campbell*, 920 F.2d 793, 795 (11th Cir.1991) (citation omitted); *United States v. Banshee*, 91 F.3d 99, 102 (11th Cir.1996), *cert. denied*, 519 U.S. 1083 (1997).

Here, the information obtained from the CI along with independent corroboration and conduct directly observed by the officer created probable cause to search Howard's vehicle, in which Bailey was a passenger. The CI provided a description of Howard, his vehicle, his expected location, and that he would be delivering methamphetamine, which officers later found during their search. *See United States v. Talley*, 108 F.3d 277, 281 (11th Cir. 1997)(finding that the informant's description of the car driven by the defendant, its location, and allegation that defendant possessed cocaine were corroborated by police and gave rise to probable cause to believe the vehicle driven by the defendant contained contraband and validated the search of the vehicle). Because the information provided by the CI was corroborated by law enforcement officers and included additional observations by the officers, including smelling the odor of marijuana emitting from the vehicle, officers had probable cause to stop then search Howard's vehicle, in which Bailey was a passenger. The Court finds that officers had the authority to search the vehicle.

### **C. Statements Made After Custodial Arrest**

As the Court finds there was probable cause for a search of Howard's vehicle and Bailey, any statements made after custodial arrest and after advice of rights can be admissible. Bailey agreed to waive her *Miranda* Rights, as evidenced by the signed waiver. Newman even

read the waiver to Bailey prior to her signing it. Additionally, any spontaneously and voluntarily made statements after the traffic stop are admissible. *See Cannardy v. Dugger*, 931 F.2d 752, 754 (11th Cir. 1991) (holding that a statement spontaneously and voluntarily made and not the result of any attempted interrogation is admissible). Because the Court finds that statements made by Bailey at the traffic stop were spontaneously and voluntarily made and statements made by Bailey during her interview were subsequent to her waiver of her *Miranda* Rights and were knowingly and voluntarily made, the statements are admissible.

### **CONCLUSION**

For the foregoing reasons, Bailey's Motion to Supplement (Doc. 83) is **GRANTED** and Bailey's Motion to Suppress Statements and Motion to Suppress Evidence (Docs. 50, 51) are **DENIED**.

**SO ORDERED**, this 31st day of July, 2019.

/s/ W. Louis Sands  
**W. LOUIS SANDS, SR. JUDGE**  
**UNITED STATES DISTRICT COURT**